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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

Case No. 2:96-cr-00189-KJD-LRL

8 Plaintiff,

ORDER

9 v.

10 JOHN BRINAR,

11 Defendant.
12


13 Presently before the Court is Defendant's Motion to Expunge Criminal Record (#276)
14 and Motion to Proceed *in Forma Pauperis* (#275). Since Defendant was represented by
15 appointed counsel on his underlying criminal action, he is allowed to proceed without payment
16 of fees. Further, the filing of the motion to expunge does not require the payment of a fee.
17 Therefore, the Motion to Proceed *IFP* is denied as moot.

18 Federal courts have limited authority and means to expunge criminal convictions. "If a
19 person who has been lawfully convicted wishes to expunge the records of conviction, that person
20 must first obtain a judgment that the conviction was unlawful." Burdick v. United States, 236 U.S.
21 79, 90 (1915). District courts do not have the power to "expunge a record of a valid arrest and
22 conviction solely for equitable considerations" because "the expungement of the record of a valid
23 arrest and conviction usurps the powers that the framers of the Constitution allocated to Congress,
24 the Executive and the states." United States v. Sumner, 226 F.3d 1005, 1014 (9th Cir. 2000). The
25 "district court's ancillary jurisdiction is limited to expunging the record of an unlawful arrest or
26 conviction, or to correcting a clerical error." Id. Since there has been no determination that
27 Defendant's arrest or conviction was unlawful or invalid, the Court must deny his motion to
28 expunge.

1 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Proceed *in Forma*
2 *Pauperis* (#275) is **DENIED as moot**;

3 IT IS FURTHER ORDERED that Defendant's Motion to Expunge Criminal Record
4 (#276) is **DENIED**.

5 Dated this 23rd day of May, 2019.

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7 
8 Kent J. Dawson
United States District Judge